



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 2, 1998

Ms. Jennifer D. Soldano
Associate General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 E. 11th Street
Austin, Texas 78701-2483

OR98-0875

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113864.

The Texas Department of Transportation (the "department") received a request for "any and all documents, accident reports, complaints . . . relating to the timing, repair to timing or service of the intersection lights located at 2000 South Beltline Road at S/FR 100 LBJ Freeway, I-635." You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

Under Open Records Decision No. 638 (1996), a governmental body may establish that litigation is reasonably anticipated by showing that (1) it has received a claim letter from an allegedly injured party or his attorney and (2) stating that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA") or applicable municipal statute or ordinance.

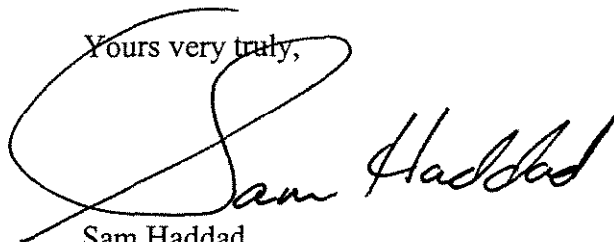
The requestor who is an attorney has submitted a letter indicating that he is making a claim under the TTCA against the department for his injuries. You have submitted to this office a copy of the letter from the requestor who was allegedly an injured party. You represent that the notice of claim letter meets the notice requirements of the TTCA. You further assert that the department "has a reasonable expectation of being sued," because a claim for damages has been submitted to the department. The claim relates to the location of the accident which is the subject of this request for information.

We find that you have shown that litigation is reasonably anticipated. Open Records Decision No. 638 (1996). We have also reviewed the records, and our review shows that they are related to the anticipated litigation. Thus, you may withhold the requested information pursuant to section 552.103(a).

In making this determination, however, we assume that the requested records have not been seen by the opposing party to the anticipated litigation. No section 552.103(a) interest generally exists with respect to information that all parties to the litigation have seen or had access to. Open Records Decision Nos. 349 (1982), 320 (1982). Also, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad", is written over a large, stylized circular flourish.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref.: ID# 113864

Enclosures: Submitted documents

cc: Mr. Timothy G. Pletta
Attorney and Counselor
150 Bethel Road
Coppell, Texas 75019
(w/o enclosures)